

# Disposal of Unneeded Federal Buildings: Legislative Proposals in the 113<sup>th</sup> Congress

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## Summary

Real property disposal is the process by which federal agencies identify and then transfer, donate, or sell real property they no longer need. Disposition is an important asset management function because the costs of maintaining unneeded properties can be substantial, consuming financial resources that might be applied to long-standing real property needs, such as repairing existing facilities, or other pressing policy issues, such as reducing the national debt.

Despite the expense, federal agencies hold thousands of unneeded and underutilized properties. Agencies have argued that they are unable to dispose of these properties for several reasons. First, there are statutorily prescribed steps in the disposal process that can take months to complete. Second, agencies are often required to complete major repairs or environmental remediation before properties are ready for disposal—steps for which agencies lack funding. Third, key stakeholders in the disposal process—including local governments, non-profit organizations, and businesses—are often at odds over how to dispose of properties. In addition, Congress may be limited in its capacity to conduct oversight of the disposal process because it currently lacks access to reliable, comprehensive real property data.

Four bills have been introduced in the 113<sup>th</sup> Congress that propose significant changes to the existing real property disposal system. The Federal Real Property Asset Management Reform Act of 2013 (S. 1398), would establish an expedited disposal program under which 200 properties would be exempt from time-consuming, statutory disposal requirements. In addition, S. 1398 would expand the role of an interagency workgroup, the Federal Real Property Council, to set disposal goals for agencies and monitor their progress in meeting those goals. The bill would also increase oversight of agency disposal activities by requiring the Administrator of the General Services Administration (GSA) to establish a real property database available to the public at no cost.

The Excess Federal Building and Property Disposal Act of 2013 (H.R. 328) would establish an expedited disposal program under which the 15 unneeded federal properties with the highest fair market value would bypass statutory disposal requirements and be offered for sale immediately. H.R. 328 would also require the GSA Administrator to establish a real property database available to the public at no cost and provide a report to Congress on the progress each landholding agency has made in reducing its unneeded property.

Two similar, but not identical, versions of the Civilian Property Realignment Act (H.R. 695, S. 1715) have been introduced. Both bills would have the same overarching structure. They would centralize the disposal process by establishing a Civilian Property Realignment Commission, which would work with agencies to develop a list of disposal recommendations to the President. If the President approved the recommendations, then they would be sent to Congress. If Congress passed a joint resolution of approval, then agencies would be required to implement the recommendations; if a joint resolution of approval was not passed, then the realignment process would end for the fiscal year.

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## Background

Federal executive branch agencies hold an extensive real property portfolio that includes approximately 361,000 buildings. These assets have been acquired over a period of decades to help agencies fulfill their diverse missions. Agencies hold buildings with a range of uses, including offices, health clinics, warehouses, and laboratories. As agencies' missions change over time, so, too, do their real property needs, thereby rendering some assets less useful or unneeded altogether. Healthcare provided by the Department of Veterans Affairs (VA) has shifted in recent decades from predominately hospital-based inpatient care to a greater reliance on clinics and outpatient care, with a resulting change in space needs. Similarly, the Department of Defense (DOD) reduced its force by 36% after the Cold War ended, and has engaged in several rounds of base realignments and installation closures.

Agencies are required to dispose of real property that they no longer need, but many continue to hold onto unneeded building space. In FY2010, the government held 77,700 buildings it identified as either not utilized or underutilized and spent \$1.67 billion operating and maintaining them.<sup>1</sup> Federal agencies have indicated that their disposal efforts are often hampered by legal and budgetary disincentives, and competing stakeholder interests.<sup>2</sup>

This report begins with an explanation of the real property disposal process and then discusses some of the factors that have made disposition relatively inefficient and costly. It then examines key provisions of four real property reform bills introduced in the 113<sup>th</sup> Congress: the Federal Real Property Asset Management Reform Act of 2013 (S. 1398); the Excess Federal Building and Property Disposal Act of 2013 (H.R. 328); and two versions of the Civilian Property Realignment Act of 2013 (H.R. 695, S. 1715), which take similar, but not identical approaches to reforming the real property disposal process. This report concludes with a discussion of policy options for enhancing the disposal process, including the potential use of Public-Private Partnerships to generate revenue from underutilized properties.

## Obstacles to Timely and Efficient Disposition

As noted, the government maintains a large inventory of unneeded or underutilized properties. These properties not only incur costs to the government to operate and maintain, but could, in some instances, be utilized by nonfederal entities—state and local governments, nonprofits, private sector businesses—to accomplish a range of public purposes, such as providing services to the homeless, or facilitating economic development. The Government Accountability Office (GAO) reports have consistently noted that efforts to dispose of unneeded and underutilized properties are hindered by statutory disposal requirements, the cost of preparing properties for disposal, conflicts with stakeholders, and a lack of accurate data. Each of these issues is discussed here.

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<sup>1</sup> Federal Real Property Council, *FY2010 Federal Real Property Report: An Overview of the U.S. Federal Government's Real Property Assets*, September 2011, p. 13. Underutilized buildings are those that have a certain percentage of space that is not being used, generally calculated as a ratio of occupancy to design capacity.

<sup>2</sup> U.S. Government Accountability Office, *Federal Real Property: The Government Faces Challenges to Disposing of Unneeded Buildings*, GAO-11-370T, February 10, 2011, pp. 4-8.

## Identifying Unneeded Space

Agencies are required to continuously survey property under their control to identify any property that it no longer needs to carry out its mission—excess property—and to “promptly” report that property as excess to the General Services Administration (GSA).<sup>3</sup> Agencies are then required to follow the regulations prescribed by GSA when disposing of unneeded property or to follow independent or delegated statutory authority.<sup>4</sup> GSA’s regulations, in turn, implement statutory disposal requirements, discussed below.<sup>5</sup>

## Statutory Disposal Requirements

The steps in the real property disposal process are set by statute. Agencies must first offer to transfer properties they do not need (excess properties) to other federal agencies, who generally pay market value for excess properties they wish to acquire.<sup>6</sup> Unneeded properties that are not acquired by federal agencies (surplus properties) must then be offered to state and local governments, and qualified nonprofits, for use in accomplishing public purposes specified in statute, such as use as public parks or for providing services to the homeless.<sup>7</sup> Agencies may convey surplus properties to state and local governments, and qualified nonprofits, for public benefit at less than fair market value—even at no cost.<sup>8</sup> Surplus properties not conveyed for public benefit are then available for sale at fair market value or are demolished if the property could not be sold due to the condition or location of the property.<sup>9</sup>

Agencies have consistently argued that these statutory requirements slow down the disposition process, compelling agencies to incur operating costs for months—sometimes years—while the properties are being screened.<sup>10</sup> Real property officials at the VA have said the McKinney-Vento Act (P.L. 100-77)—which mandates that all surplus property be screened for homeless use—can add as much as two years to the disposal process.<sup>11</sup> Because public benefit conveyance requirements are set in law, agencies do not have the authority to skip screening, even for surplus properties that could not be conveyed anyway. The Department of Energy (DOE), for example, told auditors that they had properties that they felt could be disposed of only by demolition, due to their condition or location, but that still had to go through the screening process, thereby forcing DOE to pay maintenance costs that could have been avoided.<sup>12</sup>

Statutes pertaining to environmental remediation or historic preservation also add time to the process. It may take agencies years of study to assess the potential environmental consequences of a proposed disposal and to develop and implement an abatement plan, as required by law.<sup>13</sup>

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<sup>3</sup> 40 U.S.C. §524(a).

<sup>4</sup> *Ibid.*

<sup>5</sup> The disposal provisions of General Service Administration’s (GSA) real property regulations do not apply to agencies with independent authority to dispose of their own properties.

<sup>6</sup> 40 U.S.C. §102.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> 40 U.S.C. §545.

<sup>10</sup> There are benefits to these requirements as well, but they are not the focus of this memorandum.

<sup>11</sup> U.S. Government Accountability Office, *Federal Real Property: Progress Made in Reducing Unneeded Property, but VA Needs Better Information to Make Further Reductions*, GAO-08-939, September 2008, p. 39.

<sup>12</sup> U.S. Government Accountability Office, *Federal Real Property: Progress Made Toward Addressing Problems, but Underlying Obstacles Continue to Hamper Reform*, GAO-07-349, April 2007, p. 40.

<sup>13</sup> U.S. Government Accountability Office, *High-Risk Series: Federal Real Property*, GAO-03-122, January 2003,

Similarly, the National Historic Preservation Act<sup>14</sup> requires agencies to plan their disposal actions so as to minimize the harm they cause to historic properties, which may include additional procedures, such as consulting with historic preservation groups at the state, local, and federal level.<sup>15</sup>

## **Disposal Costs**

Unneeded buildings are often among the older properties in an agency's portfolio. As a consequence, agencies sometimes find expensive repairs and renovations may be needed before the properties are fully functioning, meet health and safety standards, and comply with historic preservation requirements. It has been estimated, for example, that VA would need to spend about \$3 billion to repair the buildings in its portfolio that it rated in "poor" or "critical" condition—56% of which were vacant or underutilized, and therefore might be candidates for disposal.<sup>16</sup> The poor condition of these properties, however, may deter potential buyers or lessees, particularly if they must cover the cost of required improvements as a condition of acquiring the properties. Similarly, agencies that wish to demolish vacant buildings face deconstruction and cleanup costs that, at times, exceed the cost of maintaining the property—at least in the short run—which may encourage real property managers to retain a property rather than dispose of it.<sup>17</sup> Federal agencies frequently cite the cost of complying with environmental regulations as a major disincentive to disposal.<sup>18</sup> Generally speaking, agencies are required to assess and pay for any environmental cleanup that may be needed before disposing of a property.<sup>19</sup> Identifying and addressing environmental hazards, such as lead paint, asbestos, medical waste, and soil contamination, prior to disposition can result in "significant" costs for agencies.<sup>20</sup>

## **Stakeholder Conflict**

Some agencies have found their disposal efforts complicated by the involvement of stakeholders with competing agendas. The Department of the Interior (DOI) has said that it can be stymied by the competing concerns of local and state governments, historic preservation offices, and political factors, when attempting to dispose of some of its unneeded real property.<sup>21</sup> Similarly, VA has found that communities sometimes oppose disposals that would result in new development, and veterans groups have opposed disposing of building space if that space would be used for purposes unrelated to the needs of veterans.<sup>22</sup> The Department of State (DOS) has had difficulty in disposing of surplus real property overseas due to disputes with host governments that restrict

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p. 41.

<sup>14</sup> 16 U.S.C. §470.

<sup>15</sup> U.S. Government Accountability Office, *Federal Real Property: DHS Has Made Progress, but Additional Actions Are Needed to Address Real Property Management and Security Challenges*, GAO-07-658, June 2007, p. 42.

<sup>16</sup> U.S. Government Accountability Office, *Federal Real Property: Progress Made in Reducing Unneeded Property, but VA Needs Better Information to Make Further Reductions*, GAO-08-939, September 2008, p. 5.

<sup>17</sup> U.S. Government Accountability Office, *Federal Real Property: Progress Made Toward Addressing Problems, but Underlying Obstacles Continue to Hamper Reform*, GAO-07-349, April 13, 2007, pp. 40-41.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid., p. 16.

<sup>22</sup> U.S. Government Accountability Office, *Federal Real Property: Progress Made in Reducing Unneeded Property, but VA Needs Better Information to Make Further Reductions*, GAO-08-939, September 2008, p. 5.

property sales.<sup>23</sup> These conflicts can result in delay, or even cancellation of proposed disposals, which, in turn, prevent agencies from reducing their inventories of unneeded properties.<sup>24</sup>

## **Real Property Management and Oversight**

In addition to the obstacles mentioned above, data about agency real property portfolios—which might be useful for congressional oversight—appear to be inaccurate, and government-wide data are accessible only to the agency that manages the database, the GSA. Moreover, agencies regularly enter into leases rather than seek funding for new construction when acquiring space, even when the leased space is more expensive over time.

### **Availability and Quality of Real Property Data**

The Federal Real Property Profile (FRPP) is the government’s most comprehensive source of information about real property under the control of executive branch agencies. GSA manages the FRPP and collects real property data from 24 of the largest landholding agencies each year. Other agencies are encouraged, but not required, to report data to GSA.<sup>25</sup> The data elements that participating agencies collect and report are determined by the Federal Real Property Council (FRPC), an interagency taskforce that is funded and chaired by the Office of Management and Budget (OMB). The other members of the FRPC are agency senior real property officers (SRPOs) and GSA.

The FRPP contains data that could enhance congressional oversight of federal real property activities, such as the number of excess and surplus properties held by major landholding agencies, the annual costs of maintaining those properties, and agency disposition actions. GSA, however, does not permit direct access to the FRPP by Congress on the grounds that the data are proprietary. GSA does respond to requests for real property data from congressional offices, but GSA staff query the database and provide the results to the requestor.

Some FRPP data are made public through an annual summary report posted on GSA’s website, but the summary reports are of limited use for congressional oversight for several reasons.<sup>26</sup> Most of the data are highly aggregated (e.g., the number of assets disposed of, government-wide, through public benefit conveyance), and very limited information is provided on an agency-by-agency basis. It is not possible, therefore, for Congress to monitor the performance of individual agencies through the summary reports. Basic questions, such as how many excess and surplus properties each agency holds or has disposed of in a given fiscal year, cannot be answered. Nor is it possible to compare the performance of agencies, which limits the ability of Congress to study

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<sup>23</sup> U.S. Government Accountability Office, *High-Risk Series: Federal Real Property*, GAO-03-122, January 2003, p. 40.

<sup>24</sup> There is no government-wide real property guidance for addressing stakeholder conflicts.

<sup>25</sup> Executive Order 13327, “Federal Real Property Asset Management,” 69 *Federal Register* 5897, February 4, 2004. According to the provisions of E.O. 13327, only the 24 agencies listed in 31 U.S.C. 901(b)(1) and (b)(2), which are subject to the Chief Financial Officers Act, are required to report real property data to GSA. Those agencies are the Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation, the Treasury, and Veterans Affairs; the Environmental Protection Agency; General Services Administration; National Aeronautics and Space Administration; National Science Foundation; Nuclear Regulatory Commission; Office of Personnel Management; Small Business Administration; Social Security Administration; and United States Agency for International Development.

<sup>26</sup> The annual real property summary reports may be found on GSA’s Federal Real Property Report Library website, at [http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA\\_BASIC&contentId=23962](http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_BASIC&contentId=23962).



the policies and practices at the most successful agencies and hold poorly performing agencies accountable.

The quality of the FRPP data has also been questioned. GAO audits have found, for example, that some real property data were incomplete or were not comparable across agencies, which limited the usefulness of those data for analysis.<sup>27</sup> A recent GAO report declared that the FRPP had not been populated through sound data collection practices and key data elements—such as a building’s utilization, condition, annual operating costs, mission dependency, and value—are not consistently and accurately captured in the database.<sup>28</sup> The GAO report concluded that FRPP users “cannot be sure that the data are sufficiently reliable to support sound management and decision making about excess and underutilized property.”<sup>29</sup>

In addition, annual summary reports based on FRPP data may miscategorize important information on disposal methods. As discussed previously, agencies are statutorily required to dispose of properties through transfer, conveyance, sale, or demolition. Recently published FRPC summary reports, however, identify “other” as the largest or second largest category of property disposal, accounting for 46% of the total number of real property assets disposed by agencies in FY2007, nearly 73% of those disposed in FY2008, 41% in FY2009, and 33% in FY2010.<sup>30</sup> Typically, the “other” data category is reserved for a relatively small number of cases that do not clearly fit into one of the major data categories, so it is unusual to see such a large number of “other” dispositions. In fact, the FRPP defines “other” disposals as those “that cannot be classified in any of the other disposition methods.” The annual reports, however, do not explain why so many disposals cannot be classified as transfer, conveyance, sale, or demolition.<sup>31</sup> One explanation may be that agencies are misreporting their disposal data; another may be that some disposals are a combination of methods. If so, then the data reported for all types of dispositions may be of limited use, because thousands of properties may have been miscategorized.

The annual summary reports also omit data that might enhance congressional oversight. The FRPP contains, for example, the number of excess and surplus properties held by each agency and the annual operating costs of those properties—issues about which Congress has expressed ongoing interest—but the summary report only provides the number and annual operating costs of disposed assets, thereby providing the “good news” of future costs avoided through disposition while omitting the “bad news” of the ongoing operating costs associated with excess and surplus properties the government maintained. In addition, agencies estimate a dollar amount for the repair needs of their buildings and structures as part of their FRPP reporting, but the estimate is then folded into a formula for calculating the condition of each building.<sup>32</sup> Given that repair needs

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<sup>27</sup> U.S. Government Accountability Office, *Federal Real Property: An Update on High-Risk Issues*, GAO-09-801, July 15, 2009, p. 10.

<sup>28</sup> U.S. Government Accountability Office, *Federal Real Property: National Strategy and Better Data Needed to Improve Management of Excess and Underutilized Property*, GAO-12-645, June 2012, p. 1.

<sup>29</sup> Ibid.

<sup>30</sup> Federal Real Property Council, *FY2007 Federal Real Property Report: An Overview of the U.S. Federal Government’s Real Property Assets*, May 2008, p. 33. Federal Real Property Council, *FY2008 Federal Real Property Report: An Overview of the U.S. Federal Government’s Real Property Assets*, August 2009, p. 24. Federal Real Property Council, *FY2010 Federal Real Property Report: An Overview of the U.S. Federal Government’s Real Property Assets*, September 2011, p. 13.

<sup>31</sup> Federal Real Property Council, *FY2010 Federal Real Property Report: An Overview of the U.S. Federal Government’s Real Property Assets*, September 2010, p. 13.

<sup>32</sup> U.S. General Services Administration, Office of Governmentwide Policy, *FY2008 Federal Real Property Report*, August 2009, p. 30.

are an obstacle to disposing of some properties, Congress may find it useful to have the repair estimates reported separately to help inform funding decisions.

## **Overreliance on Leasing**

In a 2011 report, GAO wrote that it considers the government’s “overreliance on costly leased space” to be one of the primary reasons federal real property continues to be designated as a “high risk” issue.<sup>33</sup> The percentage of square feet leased by GSA—which leases property for itself and on behalf of many agencies—now exceeds the percentage of square feet it owns. According to GAO, leasing space is typically more expensive than owning space over the same time period. GAO cited, for example, a long-term operating lease that cost an estimated \$40.3 million more than if the agency had purchased the same building.<sup>34</sup> Similarly, in FY2010, the annual operating cost for a square foot of space in a building owned by the government was \$5.30, but for leased space it was \$15.00.<sup>35</sup>

GAO wrote that while the decision to lease rather than purchase space may be driven by operational requirements—such as the United States Postal Service (USPS) leasing space in areas that it believes will optimize the efficiency of mail delivery—agencies often choose to lease rather than purchase space because of budget scoring rules, even if the decision to lease is not the most cost-effective option. Under the Budget Enforcement Act of 1990, an agency must have budget authority up-front for the government’s total legal commitment before acquiring space. Thus, if an agency were to construct or purchase a building, it would need up-front funding for the entire cost of the construction or acquisition, while leased space only requires the annual lease payment plus the cost of terminating the lease agreement.

In addition to the budget scoring issue, some agencies have been granted independent leasing authority, which means they do not have to work with GSA to acquire leased space. Some agencies with independent leasing authority, such as the USPS and VA, have established in-house real property expertise, while other agencies with independent authority have not. The Securities and Exchange Commission (SEC), for example, entered into a \$557 million, 10-year lease for 900,000 square feet, which the SEC’s inspector general (IG) called “another in a long history of missteps and misguided leasing decisions made by the SEC since it was granted independent leasing authority.”<sup>36</sup> The IG found that “inexperienced senior management” at the SEC made poor decisions that led to acquiring three times the space needed—the original estimate provided to Congress was for 300,000 square feet—and bypassing other locations that were closer and less expensive.<sup>37</sup>

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<sup>33</sup> U.S. Government Accountability Office, *Federal Real Property: Overreliance on Costly Leasing Contributed to High-Risk Designation*, GAO-11-879T, August 4, 2011, p. 2.

<sup>34</sup> Ibid.

<sup>35</sup> Federal Real Property Council, *FY2010 Federal Real Property Report: An Overview of the U.S. Federal Government’s Real Property Assets*, September 2011, p. 4.

<sup>36</sup> Securities and Exchange Commission, Office of Inspector General, *Report of Investigation: Improper Actions Relating to the Leasing of Office Space*, May 16, 2011, p. 2.

<sup>37</sup> Ibid.

## **S. 1398: Federal Real Property Asset Management Reform Act of 2013**

S. 1398 was introduced on July 30, 2013, and referred to the Homeland Security and Governmental Affairs Committee. The committee ordered the bill reported without amendment favorably on July 31, 2013. S. 1398 takes a broad approach to real property management, one that builds on existing resources and expertise, requires new performance measures and reporting, emphasizes finding opportunities for agency consolidation, colocation, and reconfiguration, and requires a thorough examination of the federal leasing process. It would expand the role of the FRPC in collecting and analyzing real property data. S. 1398 would also require the establishment of a real property database that might enhance congressional oversight.

### **Scope**

S. 1398 applies to all federal agencies, which it defines as executive branch agencies and wholly owned government corporations. S. 1398 refers throughout to “underutilized” properties, which it defines a property that is used irregularly or intermittently by a federal agency or a property where a federal agency only needs a portion of the property for program purposes. The bill also defines “excess” properties as those that agency heads determine are not required to meet the needs of the agencies that control them. S. 1398 defines “surplus” properties as those that are not needed by any federal agency. Certain properties are exempt from the definition of “surplus” properties, including DOD properties subject to Base Realignment and Closure (BRAC) legislation, properties excluded for reasons of national security, certain Indian and native Eskimo lands, properties operated and maintained by the Tennessee Valley Authority, and properties operated and maintained by the USPS. The bill does not appear to exclude properties held by federal agencies in foreign countries.

### **Duties of Federal Agencies**

S. 1398 would require federal agencies to develop a system of managing their real property holdings which would include

- maintaining adequate inventory controls and accountability systems;
- defining future workforce projections and their real property needs;
- identifying excess and underutilized properties that could be used for colocation with other federal agencies or consolidation with other facilities;
- reporting excess and underutilized property to GSA promptly;
- establishing goals for reducing underutilized property;
- submitting a report to the FRPC on all excess and underutilized properties, including an assessment of whether underutilized properties could be better utilized by the agency that controls it;
- adopting workplace practices, management techniques, and space configurations that decrease the need for space; and
- identifying underutilized leased space.

Section 629(9)(B) of the bill would also require each agency to provide an annual assessment of its real property inventory to the FRPC and the GSA Administrator, including an assessment of each property that must include the

- age and condition of the property;
- size of the property in square footage and acreage;
- geographical location of the property, including its address;
- extent to which the property is being utilized;
- actual annual operating costs associated with the property;
- total cost of capital expenditures associated with the property;
- sustainability metrics associated with the property;
- number of federal employees and functions housed at the property;
- extent to which the mission of the federal agency is dependent on the property;  
and
- the estimated amount of capital expenditures needed to maintain and operate the property over the next five years.

Some of these duties are already required by regulation, but, by enacting them into law, agencies would have clear standards, set in statute, against which their real property management practices could be evaluated. In addition, the language makes it clear that a complete asset management plan must include identifying opportunities for reconfiguration that could result in a more efficient use of space. Agencies would also be reporting new data that may help policymakers plan, coordinate, and execute real property disposals in the most cost-effective manner.

## **Duties of the Federal Real Property Council**

S. 1398 would set in statute an interagency real property working group, the FRPC, which was initially established through Executive Order 13327 under President George W. Bush. S. 1398 would not alter the structure of the working group, which would consist of the SRPO of each major landholding agency, the Office of Management and Budget's (OMB's) Deputy Director for Management—who would also chair the FRPC, OMB's Controller, the GSA Administrator, and other employees the chairperson determines to be necessary. S. 1398 would also require the chairperson to designate a full-time executive director with a background in commercial real estate, real property management, and federal operations and management, to help carry out the duties of the FRPC.

The FRPC would also be required to establish a management plan template that includes performance measures, specific milestones, measurable savings, strategies and government-wide goals for reducing surplus property and improving utilization of properties that are underutilized. The FRPC would also be required to

- develop standard use rates consistent with non-governmental space use rates;
- develop a strategy to reduce reliance of federal agencies on leased space for long-term needs when ownership would be less costly;
- provide guidance on eliminating inefficiencies in the leasing process; and
- compile a list of real property assets that are field offices suitable for colocation.

In addition, the FRPC would be required to submit an annual report to the OMB Director that included a list of the remaining excess property, surplus property, and underutilized property of each federal agency. The report would also include a description of the progress the FRPC has made in fulfilling its requirements under S. 1398 and the progress agencies have made toward achieving their real property goals. In executing its duties, the FRPC would be required to consult

with state and local governments, tribal authorities, and affected communities, as well as private sector entities, and non-governmental organizations that have expertise in various aspects of real property management, such as commercial real estate, community planning and historic preservation.

## **Colocation Among United States Postal Service Properties<sup>38</sup>**

S. 1398 defines the term “postal property” to mean “any building owned by” the USPS. The bill exempts property “operated and maintained” by the USPS from the legislation’s definition of “surplus property.” The legislation does not, however, exempt USPS properties from its definition of “underutilized property.” S. 1398 defines the USPS as a “federal agency” and therefore would require the USPS to carry out the “duties of federal agencies” enumerated in the legislation.

S. 1398 states that “each year, the Postmaster General [of the USPS] may ... identify a list of postal properties with space available for use by Federal agencies ... and submit the list” to the FRPC. Subsequently, the FRPC shall share this list with federal agencies, which will have 90 days to examine it and recommend colocation of their agencies into USPS properties. S. 1398 would allow the agencies and the USPS to conclude any colocation lease.

## **Existing USPS Real Property Authority**

Congress has given USPS independent authority to acquire and dispose of its real estate as it deems proper.<sup>39</sup> Allowing USPS to make decisions over its real estate and property holdings has been viewed as integral to the concept of the USPS as encapsulated in the Postal Reorganization Act (PRA).<sup>40</sup> This 1970 statute replaced the Post Office Department with the USPS, and required it to be financially self-supporting. With the PRA, Congress relinquished a great deal of control over USPS’s operations as that control had proven problematic.<sup>41</sup>

The PRA assigned USPS the “general duty” to “maintain an efficient system of collection, sorting, and delivery of the mail nationwide.”<sup>42</sup> To carry out this obligation, Congress provided USPS with a number of powers to generate revenue and control its operational costs, including authority to “determine the need for post offices, postal and training facilities and equipment, and ... provide such offices, facilities, and equipment as it determines are needed.”<sup>43</sup> This authority has helped USPS respond to shifts in population by expanding its presence in areas where the number of people and businesses was growing, and scaling back USPS’s operational footprint in places where population were decreasing. This authority over its property and facilities also permits USPS to alter its logistical (mail-moving) network to accommodate mail volume changes and technological developments in mail processing.<sup>44</sup>

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<sup>38</sup> This section authored by Kevin R. Kosar.

<sup>39</sup> Thus, for example, Congress exempted USPS from the federal property disposition statutes (40 U.S.C. §101).

<sup>40</sup> P.L. 91-375; 84 Stat. 725 (39 U.S.C. §101 et seq.).

<sup>41</sup> Congressional directives often inhibited the Old Post Office Department from controlling its operating costs and increasing its prices.

<sup>42</sup> 39 U.S.C. §403(b).

<sup>43</sup> 39 U.S.C. §404(a)(13).

<sup>44</sup> Over the past century, the proportion of mail sorted by postal workers has greatly declined with the advent of machinery that can read the addresses on letters and parcels and sort them according to their destination.

## **S. 1398 and Existing USPS Real Property Authorities**

S. 1398's colocation provisions do not appear to reduce the USPS's long-standing authorities over lease-making. The legislation appears to intend to facilitate, not compel, the USPS to enter any colocation leasing agreements.

As noted above, however, the bill defines the USPS as a "federal agency" for the purposes of the legislation, which means the USPS would be obliged to carry out the 10 "duties" in the legislation. These duties, as described on page 8 in this report, include conducting annual property surveys, establishing property inventory controls and accountability measures, submitting to the FRPC reports on excess and underutilized USPS properties, and establishing goals to reduce excess and underutilized USPS properties.

## **Leasing**

S. 1398 would require agencies with independent leasing authority to submit to the FRPC a list of all leases, and, for each lease, the dates the lease was executed and will expire; a description of the size of the property and its address; the tenant agency; the total annual rent; and the net present value of the lease over the life of the contract.<sup>45</sup>

## **Real Property Database**

S. 1398 would require the GSA Administrator to establish and maintain a "single, comprehensive, and descriptive" database of all real property under the control of federal agencies. The database would include all of the information required in Section 629(9)(B) of the bill plus a list of real property disposals completed, including, for each property

- the date of disposal and disposal method used;
- the proceeds obtained;
- the amount of time required to dispose of the real property, including the date the property was designated as excess;
- the date on which the property is designated as surplus; and
- all of the costs associated with the disposal.

Once the database was operational, it would be made available—on request—to the Committee on Homeland Security and Governmental Affairs and the Committee on Environment and Public Works in the Senate, and the Committee on Government Oversight and Reform and the Committee on Transportation and Infrastructure in the House. In addition, the database must be accessible to the public at no cost within three years.

## **Expedited Disposal Program**

Section 627 of S. 1398 would establish a five-year pilot program that would streamline the disposal process. The OMB Director would be permitted to authorize the expedited disposal of up to 200 surplus properties a year. The disposal may occur through transfer, sale, conveyance, or demolition, and priority would be given to properties with the highest fair market value and the greatest potential for disposal. GSA would be permitted to obligate funds to pay for the costs of identifying and preparing properties to be reported as excess—the first step in the disposal

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<sup>45</sup> Net present value is a financial calculation that accounts for the time value of money by determining the present value of future savings minus up-front investment costs over a specific period of time.



process. GSA would be repaid through the proceeds of any sale of surplus properties. Properties in the pilot program may be disposed of only if the proceeds would exceed the costs of disposal and are not less than 90% of fair market value.

All properties selected for the disposal program would be exempt from a range of provisions in existing laws, including statutory provisions that would require agencies to offer the properties for public benefit conveyance. Properties may be sold, transferred, or demolished, for example, without first being offered to aid the homeless or for other public purposes, as current law requires. Proceeds from the disposal of real property would be distributed as follows:

- 80% would be returned to the U.S. Treasury for debt reduction;
- the lesser of 18% or the share of proceeds otherwise authorized to be retained under law would be retained by the landholding agencies;
- not more than 2% would be used to fund homeless assistance grants (as described in Section 627 of the bill); and
- any remaining proceeds would be returned to the Treasury for deficit reduction.

Agencies would have two years to use the proceeds they received, but only after use of those funds had been authorized in annual appropriations acts, and only for real property management and disposal. If a surplus property in the pilot program was not disposed of within two years of being listed for sale, then it may be conveyed to state and local governments or qualified nonprofits, with the exception of properties not used for housing that have an area greater than 25,000 square feet or a fair market value in excess of \$1 million.

If an agency fails to make a surplus property available for public sale within 18 months after the property was selected for the pilot program, that agency would not be permitted to increase the size of its civilian real property inventory unless the square footage of the proposed increase was offset through consolidation, colocation, or disposal of other space from that agency's inventory.

## **Homeless Assistance Grants**

S. 1398 would permit the Secretary of the Department of Housing and Urban Development (HUD) to use funds made available from the disposal of pilot program properties to provide grants to eligible private nonprofit organizations. Eligible nonprofits must use any grant funds they receive to acquire or rehabilitate property in order to provide housing or shelter for the homeless. Grant recipients must also agree to use the property only for providing homeless services for at least 15 years.

## **H.R. 328: Excess Federal Building and Property Disposal Act of 2013**

H.R. 328 was introduced January 22, 2013, and referred to the Committee on Oversight and Government Reform. The committee ordered it to be reported without amendment favorably on March 20, 2013. H.R. 328 also takes a broad approach to real property disposal reform. It includes provisions that would expedite the disposal of certain high-value properties, reduce the scope of the McKinney-Vento Act, and require landholding agencies to implement policies and practices that would reduce the number of unneeded properties in their portfolios. The bill would also require the establishment of a real property database that might enhance congressional oversight.

## **Expedited Disposal Program**

The bill would establish a real property disposal program under which the GSA Administrator and the OMB Director, based on recommendations from landholding agencies, would identify the 15 federal properties that are excess or surplus and have the highest fair market value and the greatest potential to sell. Those properties would then bypass statutory transfer and conveyance requirements and be offered for sale immediately through public auction. Upon the sale of a property, the Administrator and Director would select another high-value property to take its place, thus maintaining a pool of 15 properties for sale under the program at all times. Properties subject to BRAC legislation, properties owned by the USPS, certain Indian and Native Eskimo properties, and properties the Administrator determined are suitable for use as a public park or recreation space would be excluded from the program. It appears that the bill would not exclude federal properties located outside the United States from the expedited disposal program.

The expedited disposal program under H.R. 328 would not permit the sale of properties in the program for less than fair market value or if the property would not generate revenue in excess of the costs of disposal. In addition, properties selected for the H.R. 328 expedited program would be exempt from a range of provisions in existing laws, including statutory provisions that would require agencies to screen the properties for homeless use and public benefit conveyance.

Under H.R. 328, proceeds generated by the disposal of properties under the program would be deposited into the Treasury's General Fund, with 2% of that amount authorized for homeless assistance grants as authorized in Section 625 of the bill. H.R. 328 would permit HUD to use the proceeds from the disposal of properties for grants to eligible private nonprofit organizations that aid the homeless.

## **Duties of the General Services Administration and Executive Agencies**

H.R. 328 would require GSA to issue guidance on the development and implementation of agency real property plans, including recommendations for identifying excess properties, evaluating the costs and benefits associated with disposing of real property, and prioritizing disposal decisions based on agency missions and anticipated future holdings.

Executive agencies would be required to maintain adequate inventory controls and accountability systems, identify underutilized properties through ongoing surveys, report underutilized property to GSA, and transfer or dispose of excess property as promptly as possible. H.R. 328 would also require agencies to develop and implement a real property plan, identify and categorize all real property owned, leased or otherwise managed by the agency, and establish goals for reducing excess property in the agency's inventory. Finally, H.R. 328 would require agencies, "as far as practicable," to reassign underutilized property to another activity within the agency, transfer underutilized property to other federal agencies, and obtain underutilized properties from other federal agencies first before acquiring nonfederal property. The bill does not appear to exclude properties held by federal agencies in foreign countries.

The bill would require GSA to issue a report within three years of enactment that would detail the efforts of each agency to reduce its excess and surplus properties, and for each property disposed of, the date, method, and cost of the disposal, the proceeds obtained from disposition, and the amount of time required to complete the disposal.



## **Agency Retention of Proceeds**

The cost of bringing a property to market would be paid out of proceeds generated from the sale, lease, or transfer of real properties that were not included in the expedited disposal program. The remaining amount—net proceeds—would be deposited into the real property account of the agency that had custody of the property at the time it was declared excess. H.R. 328 would require net proceeds to be authorized for expenditure in annual appropriations acts, and those funds, if appropriated back to the agency, may only be used for real property activities. Any net proceeds not expended would be used for deficit reduction.

## **Federal Real Property Database**

H.R. 328 would require GSA to establish a database of all federal real property other than properties excluded for purposes of national security. The database would have to be accessible to Congress and the public, and it must include

- the location and size of each property;
- the relevance of each property to the agency's mission;
- the level of utilization of each property, including whether it was excess, surplus, underutilized, or unutilized, and the number of days each property was designated as such;
- the annual operating costs of each property; and
- the replacement value of each property.

Under H.R. 328, the database must also use a machine-readable format, and permit users to search, sort, and download data.

## **Sustainable Disposal of Property**

H.R. 328 would require the head of each of each agency to divert at least 50% of construction and demolition materials and debris by the end of year 2015. While the legislation does not define “divert,” this term typically refers to recycling or reusing materials that otherwise would be disposed of at a landfill.<sup>46</sup>

## **Streamlining the McKinney-Vento Homeless Assistance Act**

Under H.R. 328 agencies would not have to put all of its properties through the screening process required by the McKinney-Vento Act. Specifically, the bill would exclude from homeless screening all properties that were located in an area for which the general public is denied access in the interest of national security. In addition, H.R. 328 would not eliminate the requirement that HUD publish a list of all surplus properties approved to assist the homeless in the *Federal Register* as current law requires. Instead, the bill would require this information to be published on a HUD or GSA website.

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<sup>46</sup> As part of its Strategic Sustainability Performance Plan (SSPP), for example, GSA has set a goal of diverting “50% of its nonhazardous solid waste and construction and demolition debris from landfills through recycling, re-use of materials, composting organic waste, and thermal treatment.” GSA’s entire SSPP may be found at <http://www.gsa.gov/portal/content/187149>.

## **H.R. 695 and S. 1715: Civilian Property Realignment Act of 2013 (CPRA)**

There are currently two bills before Congress that share the title Civilian Property Realignment Act (CPRA). H.R. 695 was introduced on February 14, 2013, and referred to three committees: Transportation and Infrastructure, Oversight and Government Reform, and Rules. As of June 13, 2014, no further action has been taken in the House. S. 1715 was introduced November 14, 2013, and was referred to the Committee on Homeland Security and Governmental Affairs. As of June 13, 2014, no further action has been taken by the Senate. The House and Senate versions of CPRA take similar, but not identical approaches to reforming the real property disposal process. In terms of overarching structure, both the House and Senate versions would draw on the military base realignment and closure (BRAC) model of real property disposal by establishing an independent commission to assess agency portfolios and to recommend actions for reducing the government's inventory of unneeded and underutilized buildings. Within this structure, the bills differ in a number of ways, the most substantive of which are identified in the following discussion of key provisions.

### **Scope**

H.R. 695 has a broad scope, applying to space owned and leased by all executive branch agencies and government corporations—not just properties that are excess or surplus. The bill would exclude some properties, such as those under the jurisdiction of the DOD, properties owned by the USPS, certain Indian and Native Alaskan properties, certain properties associated with land and water management programs, and properties located outside the United States that are operated or maintained by the Department of State or the United States Agency for International Development. The legislation would encompass most major real property asset management functions, collectively referred to as “realigning” actions—including the consolidation, reconfiguration, colocation, exchange, sale, redevelopment, and transfer of unneeded or underutilized properties.

S. 1715 has a similar scope, with one major difference: the Senate version of CPRA does not exclude federal property overseas. Rather, S. 1715 specifically includes properties owned or managed by the Bureau of Overseas Buildings Operations, a component of the Department of State.

### **Development of Recommendations**

The first step in the process proposed by H.R. 695 would be for federal landholding agencies to develop their own recommendations for realigning their real property portfolios and for reducing operating and maintenance costs. Agencies would submit these recommendations to GSA and OMB not later than 120 days after the start of each fiscal year, along with specific data on each of the properties they own, lease, or otherwise control. The data would include the age and condition of the property, its operating costs, size in square feet (broken out by gross, rentable, and usable footage), number of federal employees and functions housed in the property, and the history of capital expenditures. The recommendations would include categorization of properties into those that can be sold, transferred, exchanged, consolidated, relocated, redeveloped, reconfigured, or otherwise disposed of so as to reduce the costs of operating and maintaining the federal real property portfolio.

The GSA Administrator and the OMB Director would also work together to develop criteria that they would use to determine which properties should be realigned and what type of realignment should be recommended (e.g., sale, consolidation, conveyance for public benefit) for each property. The bill specifies that nine “principles” must be taken into account when establishing the criteria; some of the supporting data needed to develop the criteria may already be collected by agencies as they develop their asset management plans or meet existing reporting requirements, such as those for the FRPP.

- The extent to which federal buildings or facilities could be sold or redeveloped in a manner that would produce the best value.
- The extent to which the operating and maintenance costs would be reduced through the consolidation, colocation, and reconfiguring of space.
- The extent to which the utilization rate is being maximized and is consistent with nongovernment standards.
- The potential costs and savings over time.
- The extent to which leasing long-term space would be reduced.
- The extent to which a property aligns with the current mission of the agency.
- The extent to which there are opportunities to consolidate similar operations across or within agencies.
- The economic impact on existing communities in the vicinity of the property.
- The extent to which energy consumption specifically would be reduced.

The OMB Director would then conduct an independent analysis of agency recommendations and revise them, as deemed appropriate. The OMB Director would then submit the revised recommendations, along with the criteria, to a newly established Civilian Property Realignment Commission. The commission would be composed of nine members, each serving a six-year term. The chair would be appointed by the President, with the advice and consent of the Senate. The President would appoint the other eight members of the commission, but would also be required to consult with the Speaker of the House regarding the appointment of two members, the minority leader of the House regarding one member, the Senate majority leader regarding two members, and the minority leader of the Senate regarding one member. H.R. 695 would also require that the commission include members with expertise in commercial real estate and redevelopment, government management or operations, community development, or historic preservation. The commission would terminate after six years.

The commission would review the OMB Director’s recommendations, but it would not be bound by them. The commission could reject, accept or modify the OMB Director’s recommendations, and add recommendations of its own. As part of the review process, the commission would be required to develop an accounting system to help evaluate the costs and returns of various recommendations. In addition, if the commission chose to hold hearings on the recommendations, then the bill would require those hearings to be open to the public. The bill would also require the commission to include in its recommendations at least five federal properties not listed as excess or surplus but that have an estimated fair market value of at least \$500 million, in total.<sup>47</sup> H.R.

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<sup>47</sup> This provision identifies possible opportunities to generate revenue from properties that are being utilized by agencies and therefore have not been declared excess or surplus. Given the relatively high market value of these properties, it is possible the government could generate significant revenue from selling them, even after accounting for the costs of relocating the federal employees that work there, if that were required under the terms of the sale.

695 does not specify that all of the high-value assets must be sold, although the commission may recommend selling one or more of them.

While the commission “shall seek to develop consensus” in its recommendations, the report may include recommendations supported by only a majority of commission members. The commission would be required to submit its final recommendations to the President, and to establish a website and post its findings, conclusions, and recommendations on it. H.R. 695 would require GAO to publish a report on the recommendations, including a review of the methodology used to select properties for realignment.

S. 1715 would implement a similar process for developing recommendations, but with a different membership composition for the commission. Under S. 1715, the commission would have seven members, not nine as proposed in the House version. S. 1715 would give the President the authority to appoint the chairperson and two members, while the majority and minority leaders of the Senate, and the Speaker and minority leader of the House would each be permitted to appoint one member. The Senate version would establish 10-year terms for commission members and the commission would terminate after 10 years.

## **Review by the President**

H.R. 695 and S. 1715 would establish similar requirements for presidential review of the commission’s recommendations. Under both bills, the President would be directed to review the commission’s recommendations and submit, within 30 days of receiving them, a report to Congress that identifies which recommendations are approved, and which, if any, are not. If the President approves all of the commission’s recommendations, then he must submit a copy of the recommendations to Congress along with a certification of his approval. If the President disapproves of some or all of the commission’s recommendations, he would be required to submit a report to Congress and to the commission identifying the reasons for disapproval, and the commission would have 30 days to submit a revised list of recommendations to the President. If the President approves of all of the revised recommendations, he must submit a copy of the revised recommendations along with a certification of his approval to Congress. If the President does not submit a report within 30 days of the receipt of the commission’s original or revised recommendations, then the process terminates for the year and agencies are not required to dispose of any properties under CPRA. In effect, the President would be able only to approve or reject a complete list of recommendations. He would not be able to amend the commission’s recommendations himself before approving them.

## **Congressional Consideration of the Recommendations**

H.R. 695 and S. 1715 would establish similar requirements for congressional consideration of the commission’s recommendations. Under both bills, Congress, after receiving the recommendations approved by the President, would have 45 days to review them and debate their merits. Congress would be required to vote on a joint resolution of approval by the end of that period. As with the President, Congress would have the authority only to act on the entire list, not to approve or disapprove of individual recommendations. If no joint resolution of approval is passed within the 45-day time limit, or if the resolution is passed and the President vetoes it, then agencies would not be required to implement the recommendations.

## **Implementation**

Under H.R. 695, if a joint resolution of approval were enacted, agencies would be required to begin implementation not later than two years from the date the President transmitted the recommendations to Congress, and to complete implementation no later than six years from the same date. The GSA Administrator would be given authority to “take such necessary and proper actions, including the sale, conveyance, or exchange of civilian real property, as required to implement the Commission recommendations” as enacted. Other federal agencies must either use their existing authorities to implement the recommendations or work with GSA to do so. The Administrator would also have the authority to convey property for less than fair market value or for no consideration at all. This would appear to permit agencies to bypass steps in the existing disposal process. A property recommended for public sale, for example, may not have to go through the public benefit screening process. H.R. 695 would require the Secretary of HUD to evaluate “to the extent practicable” certain properties for homeless use as required under the McKinney-Vento Act. The provision would apply to properties identified for disposal in an enacted joint resolution of approval that were not more than 25,000 square feet or were valued at less than \$5 million.

H.R. 695 would also expand the reporting requirements for all real property actions that exceed the prospectus threshold—the dollar amount established in 40 U.S.C. Section 3307 above which agencies must obtain approval from the House Transportation and Infrastructure Committee and the Senate Environment and Public Works Committee. The bill would require each prospectus to include a statement of whether the proposal was consistent with H.R. 695 and how life-cycle cost analysis was used to determine long-term costs, the life-cycle cost of a building, and “any increased design, construction, or acquisition costs identified” that are offset by lower long-term costs.

Under S. 1715, if a joint resolution of approval were enacted, each agency covered by the act would be required to develop, not more than 90 days after enactment, an implementation plan. Agencies would be required to provide an update on the status of the plan to the commission and GSA within one year of enactment, and to complete implementation no later than three years after enactment. If an agency failed to implement any recommendations within three years, GSA would be directed to “assume the authority of that Federal agency” and complete them. With regard to disposal, S. 1715 would exempt properties included in the enacted recommendations from many existing statutory requirements, including McKinney-Vento, although the bill would establish new guidelines for recommended public benefit conveyances.

## **Funding**

H.R. 695 would establish two accounts: a salaries and expense account to fund the commission’s administrative and personnel costs, and an asset proceeds and space management fund (APSMF), which would be used to implement recommended actions. Both accounts would receive funds from appropriations—the bill authorizes a one-time appropriation of \$20 million for the salaries and expenses account and a \$62 million appropriation for the APSMF—but the APSMF would also receive the proceeds generated by the sale of properties pursuant to the commission’s recommendations. The sales proceeds deposited in the APSMF account could only be used to cover the costs associated with implementing the commission’s recommendations.

S. 1715 would also establish a salaries and expense account and an APSMF account. The Senate version of CPRA would authorize the APSMF to receive the proceeds generated from any disposal taken pursuant to the commission’s recommendation, not just from the sale of property, as H.R. 695 stipulates. Similar to H.R. 695, the disposal proceeds generated could be used to

cover the costs associated with implementing the commission's recommendations. Net proceeds—the difference between the total disposal proceeds and the amounts used to implement recommendations—would be distributed differently. Under S. 1715, the first \$50 million in net disposal proceeds generated each fiscal year would be deposited in the general fund of the Treasury. Net proceeds in excess of \$50 million would be distributed as follows:

- 80% must be deposited in the general fund of the Treasury
- 20% would be allocated between the general fund of the Treasury and the APSMF at the discretion of the GSA Administrator.

S. 1715 would also authorize the APSMF to receive unused funds that had been appropriated for operating and maintaining properties that were subsequently disposed of pursuant to a commission recommendation.

## **Leasing Authority**

H.R. 695 would require most executive agencies seeking to acquire leased space to do so only by working through GSA. This restriction would not apply to VA properties or properties excluded for reasons of national security by the President. This requirement may facilitate oversight by consolidating leasing decisions with a single agency, although it is not clear whether this would restrict GSA's ability to delegate leasing authority to other agencies. If agencies were no longer able to use independent or delegated leasing authority, it could delay the acquisition of space needed to carry out their missions.

S. 1715 would place similar restrictions on agencies' leasing authority, although it specifies that GSA may continue to delegate leasing authority to other agencies.

## **Life-Cycle Costs**

H.R. 695 and S. 1715 would both require the Administrator to take a building's life-cycle cost into account when constructing or leasing a building. This requirement would apply only to buildings that meet three criteria: (1) the estimated construction costs exceed \$1 million; (2) the federal portion of the estimated construction or lease costs exceed 50% of the total costs; and (3) in the case of a lease, the property has more than 25,000 square feet. The bills would both define "life-cycle cost" as the total sum of

- investment costs;
- capital costs;
- installation costs;
- energy costs;
- operating costs;
- maintenance costs; and
- replacement costs.

The bills would both define "lifetime of a building"—the length of time over which the life-cycle costs would be calculated—to be 50 years or the period of time during which the building is projected to be utilized. The GSA Administrator, when submitting a prospectus to acquire space, would be required to include in the prospectus a statement of how the life-cycle cost analysis was used and whether the analysis identified potential costs that could be offset by lower long-term costs.



## Comparison and Analysis of Key Provisions

**Table 1**, below, compares key provisions from each of the four proposals examined in this report—S. 1398, H.R. 328, H.R. 695, and S. 1715. An analytical discussion follows **Table 1**.

**Table 1. Comparison of Key Provisions of Select Real Property Proposals in the 113<sup>th</sup> Congress**

	<b>S. 1398</b>	<b>H.R. 328</b>	<b>H.R. 695 and S. 1715</b>
Expedited Disposal Provisions	Apply to not more than 200 surplus properties	Apply to 15 “high-value” properties	Apply to all recommended disposals
Final Disposal Recommendations Proposed	By OMB Director	By OMB Director in consultation with GSA	By Civilian Property Realignment Commission
New Congressional Actions Required for Disposal	None	None	Joint resolution of approval to permit implementation
Real Property Database and Reporting Requirements	GSA would establish public website; FRPC would submit in-depth report to OMB Director	GSA would establish public website and submit in-depth report to Congress	Commission would establish public website and have access to agency portfolio data

### Expedited Disposal

Agencies have long argued that public benefits conveyance requirements, particularly those that require screening for homeless use, create an administrative burden that delays disposition and drives up maintenance costs. Savings, therefore, may be generated by permitting agencies to bypass screening requirements and move through the disposal process more quickly. Under H.R. 695 and S. 1715, agencies would not be permitted to go beyond their existing authorities when disposing of properties as required by enacted recommendations, although GSA would be given the authority to “take such necessary and proper actions” to implement the commission’s recommendations. In addition, the identification of individual properties for specific disposal or realigning actions may permit those properties to bypass certain statutory requirements that may otherwise have applied. By contrast, H.R. 328 and S. 1398 explicitly exempt properties from public benefit conveyance requirements, but the exemptions under H.R. 328 would apply only to the 15 “high-value” properties that would be included in the program at any given time, while the exemptions under S. 1398 would apply to all properties recommended for disposal—as many as 200.

### Final Disposal Recommendations

H.R. 695 and S. 1715 propose establishing a new Civilian Property Realignment Commission that would be responsible for the final list of recommendations to be considered by Congress. In addition, the bills would require the President to seek Senate confirmation of the commission chair, which could slow down the development of recommendations if there were delays in the nomination or confirmation process. Similarly, the other members of the commission would either be appointed by the President in consultation with Congress (under H.R. 695) or appointed by House and Senate leaders directly (under S. 1715), which could enable Congress to influence the composition of the commission.

S. 1398 would not create a new body to oversee the disposal process, but would instead utilize the existing Federal Real Property Council to develop asset management plans for each agency—plans that would include recommendations for disposal of underutilized properties. Membership on the FRPC would not be subject to congressional approval, but would ostensibly require that some of the most knowledgeable real property officials from each agency play a central role in improving real property management by developing government-wide asset management principles and policies, as well as by vetting and finalizing recommendations to the OMB Director regarding which properties should be disposed of and by what method. Under H.R. 328, agency heads would recommend properties for expedited disposal under the program that the bill would establish, but the OMB Director and the GSA Administrator would make the final selections.

## **Congressional Action on Recommendations**

H.R. 695 and S. 1715 would require a 45-day timeframe for congressional action. Congress would have less than seven weeks to review all of the recommendations—of which there may be hundreds—which could reduce oversight of major real property actions. Consolidation projects, for example, are often complex, multi-year efforts, with long-term consequences for the agencies and communities involved, and for which Congress is asked to provide hundreds of millions, or even billions, of dollars. For this reason, Congress regularly holds hearings on major consolidation proposals. For example, the effort to consolidate the Department of Homeland Security at St. Elizabeth's in the District of Columbia (DC) is estimated to cost \$3.26 billion and has been the subject of several congressional hearings.<sup>48</sup> The consequences of the consolidation are wide ranging, and include changing traffic patterns in Washington, DC, relocating thousands of employees, and ensuring historic preservation requirements are met. Similar issues have been raised regarding the consolidation of Food and Drug Administration headquarters, a project that has received hundreds of millions of dollars since FY2000. Some might argue that Congress would not have sufficient time, under the proposed time constraints, to either approve or disapprove of the recommendations. S. 1398 and H.R. 328, on the other hand, would not require Congress to approve or disapprove a list of recommendations: both bills would use programs that are managed entirely by executive agencies.

Requiring Congress to approve or disapprove of the entire list of recommended actions could reduce conflict among various stakeholders interested in the properties in question. Some civilian agencies have found their disposal efforts complicated by the involvement of state and local governments, nonprofits, businesses, and community leaders with competing agendas. In 2002, for example, the USPS identified a number of “redundant, low-value” facilities that it sought to close in order to reduce its operating costs. As part of the facility closure process, USPS was required to formally announce its intention to close each facility and solicit comments from the community. USPS ultimately abandoned its plans to close many facilities it identified—including post offices that were underutilized, in poor condition, or not critical to serving their geographic

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<sup>48</sup> U.S. Government Accountability Office, *Federal Real Property: DHS has Made Progress, but Additional Actions are Needed to Address Real Property Management and Security Concerns*, GAO-07-658, June 2007, p. 4. U.S. Congress, House Committee on Transportation and Infrastructure, *Subcommittee on Coast Guard and Maritime Transportation, Review and Status of the Multi-Billion Dollar Department of Homeland Security Relocation Project in Washington, D.C., and its Impact on the U.S. Coast Guard*, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., September 23, 2011 (Washington, DC: GPO, 2011). U.S. Congress, House Committee on Appropriations, *Subcommittee on Homeland Security, St. Elizabeths and the Department of Homeland Security Consolidation*, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., March 25, 2010 (Washington, DC: GPO, 2010).



areas—in part due to political pressure from stakeholders.<sup>49</sup> By moving the locus of decision making away from agencies and placing it in the hands of an independent commission, the amount of pressure that stakeholders exert on the process might be reduced.

## **Real Property Database and Reporting**

As discussed earlier in this report, basic data on the federal real property portfolio—including information on how many excess and surplus properties each agency holds—are currently limited. H.R. 695 and S. 1715 would both require the commission to establish and maintain a public database with “relevant information” about the commission’s recommendations. H.R. 695 would also require GAO to perform a detailed analysis of the recommendation and selection process, although no timeline is specified for the completion of the report. The commission, however, would have the authority to access all information pertaining to the recommendations, including detailed data on each property’s age, condition, operating costs, size, and the number of employees housed at the property. The commission itself would be required to post a report on its findings, conclusions, and recommendations on its own website, which may result in agency-level data being made public through the commission.

S. 1398 would require the FRPC to submit a report to the OMB Director that contains descriptive data similar to the report required under H.R. 695 and S. 1715. In addition, S. 1398 would require GSA to establish a descriptive database that must be available at no cost to the public, and require the database to include certain data that may be of use to Congress. If the database includes all of the data currently stored in the Federal Real Property Profile (consistent with national security concerns), and allows users to search and sort the data, then it could be a useful oversight tool. However, if the data used in the new database are of the same quality as the data in the FRPP, it could decrease the utility of the data for making decisions or conducting analyses. This is true for all reporting and database requirements in the four bills examined in this report.

H.R. 328 would require GSA to establish and maintain a database of all federal real properties (other than those excluded for reasons of national security) that would be accessible to the public at no cost. The database would be required to include a wealth of descriptive information of each property, and it would permit users to search, sort, and download data. This approach would potentially provide the widest public access to federal real property data, and is the only proposal that would require online data to be searchable and downloadable—functions that transparency advocates believe are important tools for effective public oversight of federal spending. As noted, however, transparency could be limited if the database provided poor quality data.

## **Concluding Observations**

Each of the bills analyzed in this report would establish procedures for selecting federal properties to sell and for the distribution of sales proceeds. Generally, each of the bills would apply net proceeds towards further real property disposals and reducing the federal deficit or debt. It is not clear, however, that much revenue might be generated under each bill, given the lack of even the most basic data needed for analysis. For example, it is not known how many excess, surplus, and underutilized properties are held by each agency, how much it would cost to bring each property to market, and the estimated fair market value of individual properties. FRPP data show that sales have not generated significant net proceeds—the amount of revenue remaining

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<sup>49</sup> U.S. Government Accountability Office, *Federal Real Property: An Update on High-Risk Issues*, GAO-09-801, July 15, 2009, p. 15.

after the cost of bringing the property to market is deducted—in recent years. For example, in FY2010, the government sold 466 properties that generated in \$57 million in net proceeds, and in FY2009 the government sold 2,228 properties that generated \$50 million in net proceeds.<sup>50</sup> The costs of bringing properties to market—whether they are due to environmental remediation or historic preservation requirements—or the undesirable location of unneeded properties are among reasons that so little profit is generated through sales. The proposed bills may increase sales revenue, however, by bringing properties to market that are in more desirable locations. H.R. 695, for example, would both require the Civilian Property Realignment Commission to recommend at least five properties that are *not* identified as excess or surplus—and therefore not subject to disposal requirements—but which have relatively high fair market value (\$500 million). Similarly, under S. 1398 the Director of OMB would have the authority to require agencies to sell properties that are not excess or surplus. If agencies are holding properties that are valuable, and which they have not declared excess—the first step in the disposal process—then these bills may provide a mechanism by which those properties may be brought to the market and possibly generate greater net proceeds than sales have in recent years. H.R. 328 would limit the scope of its real property disposal pilot program to properties that are declared excess or surplus, but it might also increase sales revenue and net proceeds by bringing the 15 properties most likely to sell at a high market value to be auctioned. If agencies invest their real property funds in bringing these properties to market as soon as possible, then valuable properties which might otherwise have been conveyed or slowly moving through the screening process would be up for sale weeks, months, or even years sooner than under the current process.

FRPP data also show that the reduction of operating and maintenance costs has yielded greater annual savings to the government than net proceeds from sales have. In FY2010 the government reduced its annual operating costs by \$274 million—four times the amount of net proceeds from sales that same year.<sup>51</sup> These figures do not include savings reported in the FRPP data that are the result of transferring properties between federal agencies, since the operating and maintenance costs have only been shifted from one agency to another, not eliminated.

There are underutilized and vacant properties, perhaps thousands of them, which agencies cannot dispose of because they lack the funding to make needed repairs. The total cost of these repairs government-wide is not known, but several agencies have reported repair backlogs in excess of \$1 billion.<sup>52</sup> Public-private partnerships (PPPs) may be an option for funding some of these repairs. While PPPs may be structured in many different ways, they generally entail a contractual relationship between a non-federal entity—defined here as a private sector entity or state or local government—and a federal agency, in which the non-federal entity provides the capital to renovate or develop an underutilized property in return for a share of the revenue the improved property generates. Some agencies have the authority to enter into specific types of PPPs—the Department of Veterans Affairs can enter into enhanced use leases, for example—which has enabled them to generate positive cash flow from underutilized or vacant properties. Expanding PPP authorities, however, might come with risks to the government. Many agencies may lack sufficient expertise among their staff to negotiate PPP contracts effectively, and the result may be a contract that is not in the best interest of the government.

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<sup>50</sup> Federal Real Property Council, *FY2010 Federal Real Property Report: An Overview of the U.S. Federal Government's Real Property Assets*, September 2011, p. 13. Federal Real Property Council, *FY2009 Federal Real Property Report: An Overview of the U.S. Federal Government's Real Property Assets*, September 2010, p. 8.

<sup>51</sup> *Ibid.*

<sup>52</sup> U.S. Government Accountability Office, *Federal Real Property: Government's Fiscal Exposure from Repair and Maintenance Backlogs Is Unclear*, GAO-09-10, October 2008, p. 2.

## **Author Information**

Garrett Hatch  
Specialist in American National Government

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